indorsed on the writ of summons herein'. That incorporates the special indorsement, admitted to be sufficient, which I have already read.

That was the position in Ireland and that is the position here as well.

The practice of exhibiting, for example, a copy of the written contract on which the claim is based or the correspondence between the parties or the invoices and delivery orders in a goods sold and delivered case may have some relevance in anticipating a contention that the plaintiffs' claim is not bona fide or some other defence, but is not necessary to meet any requirement of the O 14 procedure. In an O 14 application, the plaintiff is not required to prove his claim. In the instant case, the learned senior assistant registrar would have been justified in giving summary judgment to the plaintiff on the basis of the first affidavit filed in support of the application which had met all the requirements presented by O 14. The contention made on behalf of the defendants at the initial hearing amounted to a submission that the plaintiffs had not proven their claim which, as has been seen, is not required of a plaintiff in an O 14 application.

At the further hearing again, in effect, the defendants were complaining, on this occasion by affidavit, that the plaintiff had not proven its claim. The senior assistant registrar was justified in giving summary judgment and accordingly the appeal had to be and was dismissed with costs.

Appeal dismissed.

Solicitors: *Cheang & Ariff; V Chandran.*

Reported by *Kevin Mathews*

Syarikat Tungaring Kilang Papan Sdn Bhd v Sabah Forest Industries Sdn Bhd & Ors

HIGH COURT (KOTA KINABALU) — CIVIL SUIT NO K596 OF 1988
HAIDAR J
4 AUGUST 1989

Civil Procedure — Injunction — Application to set aside — Serious question to be tried — Balance of convenience — Forest Enactment 1968, ss 4(1), 24(3) & 24(4)(a)

Civil Procedure — Interlocutory proceeding — Cross-examination on affidavit — Rules of the High Court 1980, O 38 r 2(3), O 60 r 4(1)(c)

The plaintiff had been allocated 10,000 acres to take forest produce for two years from 1 January 1985. At the plaintiff's request, a licence was granted over 5,000 acres only until the end of 1985 and it was further allowed to exploit the remaining 5,000 acres until the end of 1986. Subsequently, the plaintiff appealed for an extension of three years on the grounds firstly, that there was a balance of 2,000 acres which remained unworked and secondly, that there were still a lot of logs in the other 8,000 acres. On 8 January 1987, the Chief Minister endorsed the plaintiff's letter of appeal with the remark 'Approved for renewal'. The plaintiff was then informed that it had approval to continue logging the 2,000 acres for one year to the end of 1987. Accordingly, the 5,000 acres stated in the licence was amended to 2,000 acres and the licence was later renewed to the end of 1988. Following the expiry of the plaintiff's rights over the 8,000 acres, the first defendant was granted a permit to exploit this area which they subsequently assigned to the second and third defendants. The first defendant had a licence for the said area until the 24 August 1989. The plaintiff, however, refused the first defendant access to the area and contended that although its appeal for 10,000 acres had been approved by the Chief Minister, the forest officer had failed to issue the plaintiff a licence for the same except for the 2,000 acres. The plaintiff accordingly commenced proceedings for a declaration and obtained an interim injunction on 6 March 1989. The following applications were filed: (i) by the plaintiff, to cross-examine certain deponents on their affidavits; (ii) by the defendants, to set aside the interim injunction.

Held, dismissing the plaintiff's application and allowing the defendant's application:

(1) The application for cross-examination would be dismissed. The authorities tend to show that the courts are slow in granting such an application where the power to do so is discretionary. As the deponents had in their affidavits explained at length the remark 'Approved for renewal' which appeared to be the object of the cross-examination, cross-examining them on this would at most be a repetition of that deposed to. The effect of the remark may properly be a question to be tried in the action.

(2) The injunction should be set aside. There is no serious question to be tried except as to the legal effect of the remark 'Approved for renewal'. There cannot be a contractual relationship between the state government and the plaintiff by the remark which cannot be construed other than that it meant approved in principle, ie subject to other matters being in order. Further, the approval for only 2,000 acres necessarily implies that the plaintiff's 'proposal' to continue logging over 8,000 acres must have been rejected. The plaintiff had also subsequently appealed for an extension over this 2,000 acres to the end

of 1988. The absence of any complaint to the granting of only 2,000 acres, from the first approval to the date of the renewal, naturally implies that the decision was accepted by the plaintiff.

(3) The expiry of the three-year period claimed by the plaintiff is in December 1989. As the remaining period is short and the first defendant is a state agency backed by the government, the plaintiff, if successful, would be adequately compensated by damages for the loss sustained between the application and the trial. The first defendant, being a state agency, would be in a stronger position to get an extension of its licence and accordingly, the damages would be substantial if it is injuncted until the trial, which may take some time. Looking at the plaintiff's position, the first defendant could not be adequately compensated by the plaintiff.

(4) An important factor in considering the balance of convenience, should this otherwise be even, is the preservation of the status quo. As the first defendant's chances of getting a renewal of the licence is almost 99 per cent and the overall project is of public interest, it is not desirable that the status quo be maintained until the trial.

(5) Taking into account the relative strength of each party's case as revealed by the affidavit evidence, the balance in this case is in favour of the first defendant.

[*Editorial Note*: The plaintiff's appeal to the Supreme Court vide Civil Appeal No 02-300 of 1989 was withdrawn on the day of hearing, 12 March 1989.]

Cases referred to

1 *Balwant Singh Purba* v *R Rajasingam* [1987] 2 CLJ 317 (refd)
2 *Professor Dr A Kahar Bador & Ors* v *N Krishnan & Ors* [1983] 1 MLJ 407 (refd)
3 *American Cyanamid Co* v *Ethicon Ltd* [1975] AC 396 (folld)
4 *JT Stratford & Son* v *Lindley* [1965] AC 269 (refd)
5 *Fellowes* v *Fisher* [1975] 2 All ER 829 (folld)
6 *Abdullah bin Mamat & Anor* v *Pengarah Hutan Negeri Terengganu & Anor* [1982] 1 MLJ 342 (folld)
7 *Howell* v *Falmouth Boat Construction Co Ltd* [1951] AC 837 (refd)
8 *Sidek bin Hj Muhamad* v *Government of Perak* [1982] 1 MLJ 313 (refd)
9 *Rimbunan Hijau Sdn Bhd* v *Sarawak Plywood (H) Sdn Bhd* [1985] 2 MLJ 377 (refd)
10 *Si Rusa Beach Resort Sdn Bhd* v *Asia Pacific Hotels Management Pte Ltd* [1985] 1 MLJ 132 (refd)

Legislation referred to

Forest Enactment 1968 ss 4(1), 24(3), 24(4)(a)
Rules of the High Court 1980 O 2 r 1, O 38 r 2(3), O 60 r 4(1)(c)

Muhammad Shafee Abdullah (*PK Lim* and *B Sugumar* with him) for the plaintiff.
G Pannirselvam and *H Luping* for the first defendant.
Richard Barnes for the second and third defendants.
Stephen Foo (State Attorney General) for the fourth and fifth defendants.

Cur Adv Vult

Haidar J: There are two applications before me:

(1) An application by the plaintiff to cross-examine deponents, viz Datuk Pairin (the Chief Minister) and Mr William Shim (the Permanent Secretary, Natural Resources) on their affidavits.

(2) An application by the first defendant to set aside the interim injunction granted to the plaintiff on 6 March 1989.

Before considering the two applications, I think it is perhaps appropriate that I set out briefly the background facts of the case. An area of about 32,000 acres or 50 sq miles of forest reserve known as Gunong Lumaku was given to the plaintiff vide licence SK 9/75, deemed to be effective from 1 October 1975. The plaintiff company then was owned by a group of Bumiputras and it seemed that in 1978 the present shareholders of the plaintiff company bought over the shares of the group of Bumiputras (see para 1 of exh 'RTK-15' to the affidavit of Rudy T Kinajil dated 3 April 1989) (exhs 'RTK' hereinafter refer to exhibits annexed to Rudy's affidavit).

On 3 March 1982, the Pegawai Hutan Daerah Beaufort informed the plaintiff that licence SK 9/75 had terminated on 30 September 1980 (see exh 'RTK-2(a)'). Licence SK 9/75 was referred to as 'special licence' (see exh 'RTK-1(a)'). By exh 'RTK-2(a)', the plaintiff was advised to submit certain particulars in order for a new licence to be issued. Apparently, in response to the query of the plaintiff, the Conservator of Forests, in his letter dated 4 March 1988 (see exh 'RTK-2(b)') addressed to the plaintiff, explained that though the special licence SK 9/75 will only expire on 30 September 1987, such licence is governed by s 24(3) of the Forest Enactment 1968 and hence expired on 30 September 1980 and quoted the said section in his letter. In 'RTK-2(b)2', the plaintiff was also informed that the area covered under licence SK 9/75 included areas that were specially allocated for the paper and pulp project and hence licence SK 9/75 could not be renewed.

It is to be noted that the forest area comprised in licence SK 9/75 to take forest produce is divided into yearly coupes for the purposes of exploitation. The party in whose favour a licence is issued, as in this case, is only entitled to enter into a particular coupe upon the issue by the forestry department of a coupe permit (see para 5(i) of the licence — 'RTK-1(a)').

Following the termination of licence SK 9/75, the plaintiff was granted a Form 1 Licence No FOBT 5/82 to take forest produce over 3,143.3 hectares in the Gunong Lumaku Forest Reserve for the period 19 October 1982 to 31 December 1982 and further extended to 31 December 1983 (see exh 'RTK-2' and 'RTK-4'). Strictly speaking, the allegation in the particulars set out by the plaintiff in its para 7 of the statement of claim that it was not permitted to carry out any logging operations from 3 March 1982 until 9 February 1985 is not totally correct in the face of exhs 'RTK-2' and 'RTK-4'.

The plaintiff in its letter (exh 'RTK-5') appealed to the then Chief Minister to reconsider the 'termination' of

licence SK 9/75 citing, inter alia, finance as the main ground for it being able to do logging of the area only in 1980. The Chief Minister, through William Shim, Pemangku Setiausaha Hasil Bumi (see exh 'RTK-6') responded to 'RTK-5' by saying that the appeal of the plaintiff could not be entertained as the area covered by licence SK 9/75 has been allocated by the state government for a paper and pulp project. The plaintiff was, however, given until 31 December 1983 to leave the said area and the necessary Form 1 licence will be issued to cover the period up to 31 December 1983 upon the usual conditions and payments for the said period.

In another letter addressed to the plaintiff (exh 'RTK-7(a)') William Shim, Setiausaha Hasil Bumi, again reiterated the reason for the termination of licence SK 9/75 citing s 24(3) of the Forest Enactment 1986 and repeated that the area has been allocated for a paper and pulp project. Further, it was stated in exh 'RTK-7(a)' that in view of the difficulties and problems faced by the plaintiff, the plaintiff was allowed to continue with the logging in the area of around 3,143.3 hectares under the Form 1 licence until 31 December 1983. On 16 December 1983, the plaintiff was notified by Pegawai Daerah Hutan, Beaufort that licence FOBT 5/82 will expire on 31 December 1983 and all logging activities are to stop from the said date.

Following the expiry of licence FOBT 5/82, representations were made by the plaintiff and as a result it was eventually decided to allocate to the plaintiff for the purposes of taking forest produce:

(a) an area of 10,000 acres in Gunong Lumaku Reserve;
(b) an area of 20,000 acres in the district of Sandakan to be determined by the Conservator of Forests. (See exhibit 'RTK-8'.)

The area under (b) above is not relevant for the purpose of the present application. The area under (a) above is the area that is in dispute now. In fact the area in dispute between the plaintiff and the first defendant, as admitted by both parties, is only confined to an area of 8,000 acres only out of the 10,000 acres.

In respect of the 10,000 acres in the Gunung Lumaku area, the plaintiff wrote a letter to the Pegawai Daerah Hutan, Beaufort on 11 October 1984 (see exh 'RTK-9') asking that the area be divided into two coupes of 5,000 acres each for logging purposes. The Pegawai Daerah Hutan, Beaufort notified the plaintiff that the said area had to be exploited within two years. (See exh 'RTK-10(a)'.) The plaintiff by its letter dated 12 November 1984 (exh 'RTK-10(b)') sought clarification regarding the period for it to work out the area of 10,000 acres. The Setiausaha Hasil Bumi by exh 'RTK-10(c)' confirmed that the period pertaining to the 10,000 acres is for two years beginning from 1 January 1985. As a result, licence PHDB 1/85 (exh 'RTK-11') was issued to the plaintiff for the period 9 February 1985 to 31 December 1985 over an area of 5,000 acres only in the Gunung Lumaku area apparently at the request of the plaintiff as per exh 'RTK-9'. The plaintiff was allowed to exploit the remaining 5,000 acres until the end of 1986. This is borne out by the letter from the plaintiff itself (see exh 'RTK-12') as per para 2 thereof where the plaintiff admitted that they could not finish the area of 10,000 acres in 1986 due to the poor prices of logs in 1985 and early 1986 and hence appealed that it be given an extension of one more year until 31 December 1987. It would appear to be incorrect for the plaintiff to aver in para 10 of the statement of claim that only 5,000 acres were allocated to it — claiming that the number 10,000 acres having been amended to 5,000 acres. In fact, in its letter of appeal to the Chief Minister (exh 'RTK-15'), the plaintiff intimated having received 10,000 acres under licence PHDB 1/85!

From my reading of the letter of appeal of the plaintiff (exh 'RTK-15'), it appears to me that the appeal was on two grounds:

(i) There is a balance of about 2,000 acres which are yet to be worked out and as the licence PHDB 1/85 will expire on 31 December 1986, it be allowed to work on the balance of the 2,000 acres. It cited the reasons for being unable to complete the logging of the area of 10,000 acres within the prescribed period as due to the terrain of the area, the weather and the instability of the prices of the logs for export.
(ii) There are still a lot of logs in the 8,000 acres that it worked as the logs could not be exported and it proposed to work on the said area.

The Chief Minister endorsed on 'RTK-15' with the remarks 'Approved for renewal' on 8 January 1987. This endorsement is not disputed. Therefore, the plaintiff by para 13 of its statement of claim averred that its appeal vide exh 'RTK-15' for 10,000 acres was approved by the Chief Minister and yet the forest officer failed and continued to fail to issue a licence to the plaintiff except for an area of 2,000 acres.

William Shim, Setiausaha Hasil Bumi, vide a letter dated 17 January 1987 (exh 'RTK-16') and addressed to Pemilihara Hutan, Sandakan referred to the appeal of the plaintiff for extension of licence PHDB 1/85 until 1989. This appeal, I think, must be in reference to exh 'RTK-15'. According to exh 'RTK-16', approval was given to the plaintiff to continue with the logging for the area that has not been worked on yet, ie about 2,000 acres for one year ending in December 1987. A copy of 'RTK-16' was extended to the plaintiff. Accordingly, the plaintiff was notified that the area of 5,000 acres approved vide licence PHDB 1/85 is amended to 2,000 acres ending in December 1987 (see exh 'RTK-17'). Apparently, a further extension of one year for the area of 2,000 acres was given to the

plaintiff ending on 31 December 1988 (see exh 'RTK-18(a)' and 'RTK-18(b)'). This is confirmed by exh 'WS1' at para D3(b) to the affidavit of William Shim dated 3 June 1989 (exhs 'WS' hereinafter refer to exhibits annexed to William Shim's affidavit). 'RTK-18(b)' is the approval for the extension of the 2,000 acres up to 31 December 1988 in response to the plaintiff's application (see exh 'WS 7').

Following the expiry of the plaintiff's rights over the 8,000 acres comprised in licence PHDB 1/85 and which was not covered by the amendment slip (see exh 'RTK-17'), the first defendant was granted a coupe permit to enter the said area of 8,000 acres and to exploit the same as part of licence SK 14/88. The first defendant then assigned the second and third defendants to enter into the area covered by the coupe permit pursuant to its agreements with them and in exercise of its rights under the special licence. Earlier on, the first defendant's rights in and over the adjoining forest areas to the amendment slip (exh 'RTK-17') were conferred by the state government under special licence SK 6/83 (exh 'RTK-19') for five years from 15 July 1983 to 15 July 1988. On the expiry of licence SK 6/83, the state government then issued special licence SK 14/88, this time over an extended area of 288,623 hectares in favour of the first defendant (see exh 'RTK-20') and which included the 8,000 acres. This 'RTK-20' is for one year ending on 24 August 1989. The dispute started when the plaintiff refused to allow access to the first defendant and its contractors to enter the disputed area over which the coupe permit was granted to the first defendant. There was correspondence between the first defendant, the plaintiff and the forest department over the dispute. The plaintiff asserted vide its letter (exh 'RTK-29') of its entitlement under licence SK 9/75 and the alleged approval given by the Chief Minister (see exh 'RTK-15') and intimated that it will commence legal action to ascertain its legal position over the dispute. Hence the filing of this action for declaration by the plaintiff against the first, second, third, fourth and fifth defendants.

So much of the facts as can be ascertained from the pleadings and the affidavits. I now proceed to consider the applications.

Application by the plaintiff to cross-examine the deponents, viz Datuk Pairin and Mr William Shim on their affidavits

The plaintiff issued notices dated 6 June 1989 under O 38 r 2(3) of the Rules of the High Court 1980 to cross-examine the deponents, Datuk Pairin and Mr William Shim, and the said notices were duly served on the solicitors for the first defendant as well as the State Attorney General. Encik Shafee indicated that the procedure of issuing only notices under O 38 r 2(3) was adopted by him following what has been practised in the High Courts. He went on to show to the court a sample notice where he himself was involved as a plaintiff in Civil Suit No 56-21-428-87 where the senior federal counsel, acting for the defendants, issued by way of notice to cross-examine him on his affidavit. The affidavit in support of notices of intention to cross-examine was affirmed by Simon Jingkin Pingguan *alias* Simons Jenkins on 6 June 1989.

Mr Selvam, counsel for the first defendant, objected to the procedure adopted by Encik Shafee as well as to the substance of the plaintiff's application. Before proceeding with his objection, Mr Selvam complained to the court that the contents of the affidavit of Simons Jenkins in support of the notices were released to the press and published accordingly before they are heard by the court, citing such action as being oppressive and prejudicial and may amount to a contempt of court. Further, Mr Selvam said that the documents come under O 60 r 4(1)(c) and therefore must be authorized by the registrar for their release from the court registry. First, I think Mr Selvam got it wrong regarding the release to the press, as pointed out by Encik Shafee; in fact the contents of the affidavit of Datuk Pairin were instead released to the press and further it was not Encik Shafee who filed the application as reported but it was filed by Mr PK Lim, as can be confirmed from the documents filed. In my view, if there are any wrongs committed by any member of the Bar, as Mr Selvam seemed to imply, it is a matter for the Bar Council to take appropriate action and not for the court.

As regards the objection on the procedure, Encik Shafee submitted that even assuming that the procedure adopted is wrong, it is only an irregularity and can be waived by the court under O 2 r 1.

I indicated to counsel that we should not waste time on trivial issues and technicalities which are of no substance, really, and get on with the hearing of the plaintiff's application on its merits. I adjourned for a short while to give time for counsel to give a thought to what I indicated. On resumption, Mr Selvam rightly agreed that the court should proceed to hear the plaintiff's application on its merits.

I proceeded to consider whether there are merits in the plaintiff's application. From the affidavit in support of the application, it is observed that the object of the cross-examination is principally centred on the remarks 'Approved for renewal' made by Datuk Pairin. It is to be noted that both deponents explained at length on this issue and I do not think the granting of the application to cross-examine them on this issue is of real help. It will, at most, be a repetition of what they already deposed to in their affidavits. Encik Shafee indicated also that the deponents may be asked to explain how a licence is processed. In my view, such explanation, if really necessary at this stage of the proceeding, should properly come from the Director of Forests, and not the deponents, especially

Datuk Pairin, who is involved in policy matters and would not know, with respect, the mechanism of the processing of a timber licence. In any event, the authorities tend to show that the courts are slow in granting such an application where the power to do so is discretionary. It is sufficient for me to quote a passage from the judgment of Lim Beng Choon J in the case of *Balwant Singh Purba* v *R Rajasingam*[1] at p 317:

> 3 There is no dispute that the power given by the said O 38 r 2(3) is obviously a matter of discretion to be exercised by a court in accordance with well-known judicial principles. For purpose of this judgment I need only mention two of the principles. The first one is mentioned in the following passage appearing at p 592 of the English *Supreme Court Practice* (1979) Vol 1:
>
> > 'There is a discretion as to ordering cross-examination on affidavits filed on interlocutory application. Cross-examination upon affidavits sworn in applications for interlocutory injunctions is very rare.'
>
> 4 The second principle is that the power as conferred by the said O 38 r 2(3) can be invoked only in respect of an issue which the court is asked to determine in the interlocutory proceeding and not in respect of any other issue which should be determined at the trial of the action proper. In this connection reference may be made to *Abraham & Co* v *Dunlop Pneumatic Co* [1905] 1 KB 46 at 52 where Mathew LJ said:
>
> > 'That applies only to a question of fact which the court or a judge has at the time jurisdiction to decide, and not to a question to be tried in the action. The question under which this appeal arises relates to an issue which must be tried in the action with the other issues, and is not a matter that can be determined at chambers.'

It is clear, in my view, that the fact on the remarks made by Datuk Pairin 'Approved for renewal' is admitted by Datuk Pairin. The effect of the remarks made by Datuk Pairin may properly be a question to be tried in the action. I agreed that the plaintiff's application to cross-examine the deponents, as submitted by Mr Selvam, would appear to be 'a roving exercise'. In the premises I dismissed the plaintiff's application.

An application by the first defendant to set aside the interim injunction granted to the plaintiff on 6 March 1989

Before proceeding to consider the application, the following facts are admitted by both parties and are not therefore in dispute:

(a) The area in dispute in so far as is relevant to the application before me is 8,000 acres and *not* 10,000 acres.

(b) The disputed area of 8,000 acres is state land and *not* forest reserve.

Though in the application of the first defendant to set aside the interim injunction, it would appear that the first defendant was relying heavily on the issue of 'material non-disclosure by the plaintiff as one of the grounds, its counsel, Mr Selvam, informed the court that he is abandoning this ground and the court could ignore it. Encik Shafee asked the court whether he should reply on this issue. In view of the stand taken by Mr Selvam, I intimated to Encik Shafee that he need not do so. Mr Selvam did not advance any reason for abandoning 'the material non-disclosure' issue and he is, I think, not bound to do so. However, in my view, this issue is not really that formidable as can be observed from the judgment of Hashim Yeop A Sani J (as he then was) in considering the 'material non-disclosure' issue in the case of *Professor Dr A Kahar Bador & Ors* v *N Krishnan & Ors*[2] where at p 409, his Lordship said:

> An interlocutory injunction will not be dissolved unless the misrepresentation or suppression was of such a character as to mislead the court or if the true picture was presented the court would probably have not granted the injunction.

Further on at the same page, his Lordship said:

> An interlocutory injunction is merely provisional in nature, and does not conclude a right. It is said that a person who comes to court for an interlocutory injunction is not required to make out a case which will entitle him at all events to relief at the hearing. *It is enough if he can show that he has a fair question to raise as to the existence of the right which he alleges. It can be seen that in an application for an interlocutory injunction the court interferes on the assumption that the party who seeks its interference has the legal right which he asserts.* (Emphasis added.)

In my view, Mr Selvam has rightly abandoned this issue. In that event, the first defendant's grounds to set aside the interim injunction are now as follows:

(a) There is no issue to be tried between the plaintiff and the first defendant.

(b) Damages are an adequate remedy for the plaintiff.

(c) The balance of convenience is in favour of the injunction being discharged.

(d) The action by the plaintiff is frivolous and/or is otherwise an abuse of the process of the court.

(e) The plaintiff is not entitled to equitable relief by reason of the operation of the doctrines of laches, waiver, acquiescence and estoppel.

The application is supported by the affidavit of Rudy T Kinajil, the general manager of forestry and timber of the first defendant.

Prior to the judgment of the House of Lords in *American Cyanamid Co* v *Ethicon Ltd*,[3] the English courts in deciding whether to grant or refuse an injunction habitually proceeded on the lines indicated by Lord Upjohn in *J T Stratford & Son* v *Lindley*,[4] that is the requirement of a prima facie case. However, in the *American Cyanamid* case,[3] the House of Lords, by way of actual decision, laid down an entirely different approach which is to be followed in connection with interlocutory relief. Sir John Pennycuik in *Fellowes* v *Fisher*[5] at p 843 aptly summarized

the principles set out by Lord Diplock in *American Cyanamid*[5] as follows:

(1) Provided that the court is satisfied that there is a serious question to be tried, there is no rule that the party seeking an interlocutory injunction must show a prima facie case.
(2) The court must consider whether the balance of convenience lies in favour of granting or refusing interlocutory relief.
(3) 'As to that' the court should first consider whether, if the plaintiff succeeds, he would be adequately compensated by damages for the loss sustained between the application and the trial, in which case no interlocutory injunction should normally be granted.
(4) If damages would not provide an adequate remedy the court then considers whether, if the plaintiff fails, the defendant would be adequately compensated under the plaintiff's undertaking in damages, in which case there would be no reason on this ground to refuse an interlocutory injunction.
(5) Then one goes on to consider all other matters relevant to the balance of convenience, an important factor in the balance, should this otherwise be even, being preservation of the status quo. By the expression 'status quo', I understand to be meant the position prevailing when the defendant embarked on the activity sought to be restrained.
(6) Finally, and apparently only when the balance still appears even, 'it may not be improper to take into account in tipping the balance the relative strength of each party's case as revealed by the affidavit evidence...'.

I will endeavour to apply the above principles to the first defendant's application before me.

Principle (1)

Under this heading, I will first have to decide whether there is in fact and in law a serious question to be tried. Going by the facts as set out in the early part of my judgment, I gather that there is no serious question to be determined on the material facts available except as to the facts pertaining to the remarks 'Approved for renewal' by Datuk Pairin, which though admitted as having been made, the question remains as to the legal effect of such remarks. I then have to ask myself whether such question is that serious that it should go for trial or it can be determined by the court at this stage on the facts available before the court and the points of law are not complex as to be determined at the trial.

Encik Shafee submitted that the said remarks gave rise to a binding contract and in any event, the Chief Minister has the authority especially under s 4(1) of the Forest Enactment 1968. Section 4(1) reads:

> Subject to the general or special directions of the Minister, the conservator shall be directly responsible for the administration of the forests of the state and shall, subject to the provisions of this Enactment, have the general superintendance of all matters within the provisions of the Enactment.

The remarks 'Approved for renewal' necessarily imply, if I heard Encik Shafee correctly, that the remarks amounted to directions under s 4(1) and must therefore be given effect to by the officers giving the plaintiff a licence for renewal, if one would like to call it that for three years for the area of 10,000 acres as allegedly applied by the plaintiff per its letter of appeal, 'RTK-15'. Mr Selvam seemed to think otherwise and relied on the case of *Abdullah bin Mamat & Anor* v *Pengarah Hutan Negeri Trengganu & Anor*.[6] It is best that I set out the facts in brief of *Abdullah*'s case.[6]

The plaintiffs in that case applied for a logging licence to cut timber on state land at Paya Durian Pahit, Merchang. The defendant, Pengarah Hutan Negeri Terengganu, wrote a letter to the plaintiffs approving their application and the approved area was altogether 800 acres and that the licence to be issued was a Form 1 licence. The plaintiffs were asked to make payment of $3,025 within two weeks and to get in touch with the relevant district forest officer for the issue of the licence. The plaintiffs promptly made the payment and expended some money for purposes of working on the approved area. Suddenly, the plaintiffs were informed that the approval was revoked as the area concerned would be given to the public on tender system and the plaintiffs were invited to participate but they did not. The plaintiffs then sued the defendants for the sums expended and for damages.

Salleh Abas FJ (as he then was) sitting as a High Court judge, in considering the legal effect of the approval by the Pengarah Hutan Negeri Trengganu said, at p 343 thereof thus:

> It is completely a misconception of the law to regard the approval of the logging area and the issue of a logging licence as being based on contract.

His Lordship went on further to explain his view in the later part of the judgment as follows:

> Anyone who takes forest produce without a licence or contrary to a condition of the licence is guilty of an offence punishable under s 28 of the enactment. The licence is thus the requirement of the law and not really a matter of free choice by both parties as a contract is. When the plaintiffs were applying for a logging area, they were in fact applying for a licence to take away available timber in the area applied for, and when the first defendant wrote a letter stating that the application was approved he was in fact informing the plaintiffs that a Form 1 licence to carry out logging in the applied area had been *approved in principle* and that the requisite licence would be issued to them as a matter of course after they had paid all the required fees and contacted the relevant district officer. *In my view under no circumstances could the application for licence and its approval be held to have created con-*

tractual rights and obligations between the applicant and the licensing authority (Emphasis added.)

I think it is safe to assume that the Pengarah Hutan Negeri Terengganu has the authority to approve the licence as there is no evidence to the contrary, ie it is not so pleaded as one of the grounds of defence, otherwise, I am sure it will be touched upon by Salleh Abas FJ (as he then was) in his judgment.

We have similar provisions in the Sabah Forest Enactment 1968 relating to the offences provisions. However, Encik Shafee sought to distinguish *Abdullah*'s case[6] with this case by saying that *Abdullah*'s case[6] relates to a *new* licence whereas the present case is in respect of a *renewal* of the licence. The fact that there is no provision in the Forest Enactment 1968 in respect of renewal of a licence is clear and not disputed. Therefore the use of the word 'renewal' to my mind does not make any difference as it in fact means that a licence will have to be issued or sometimes an endorsement, as Encik Shafee showed, may be made on the existing licence extending it to the approved period after the necessary fees are paid, the other terms remaining unchanged, but I think, perhaps purely for administrative convenience.

Going by the authority of *Abdullah*'s case,[6] it is clear, in my view, that there cannot be a contractual relationship between the state government and the plaintiff by the remarks 'Approved for renewal'. Following what Salleh Abas FJ (as he then was) said in considering the approval by the Pengarah Hutan Negeri Terengganu, the remarks 'Approved for renewal' by Datuk Pairin cannot be construed other than that the remarks meant approved in principle, ie subject to other matters being in order. In that event the explanation of Datuk Pairin and William Shim to that effect cannot be said to be devoid of merits.

It is not disputed that the area of 10,000 acres is state land. If it is so, then it is governed by s 24(4)(a) of the Forest Enactment 1968 and is valid for one year only unless there is a written consent of the Director of Lands and Surveys. It follows therefore that if there is any promise or approval by the licensing authority as alleged, such promise or approval cannot go beyond the powers or scheme prescribed by statute (see *Howell* v *Falmouth Boat Construction Co Ltd*;[7] *Sidek bin Hj Muhamad* v *Government of Perak*[8]).

Further, in my view, the remarks 'Approved for renewal' which the plaintiff is relying on must be considered and construed in the light of what were said in its letter of appeal ('RTK 15'). My understanding of 'RTK 15', which is in Bahasa Malaysia (and fortunately my Bahasa Malaysia, I think, is not that bad), is that the plaintiff is more interested in getting its licence PHDB 1/85 extended for the unworked area of around 2,000 acres. The plaintiff, after explaining why it cannot complete working out the whole area of 10,000 acres in its letter 'RTK-15', said and I quote:

> Untuk makluman YAB Datuk seterusnya luas kawasan yang tinggal dalam kawasan 10,000 ekar itu adalah tidak kurang 2,000 ekar lagi. Oleh kerana luas lagi kawasan yang tinggal, maka kami mohon jasa baik YAB Datuk agarnya dapat mempertimbangkan permohonan kami untuk melanjutkan lagi tempoh lesen PHDB 1/89 hingga tahun 1989.

As regards the remaining area of 8,000 acres, this is what the plaintiff said:

> Sungguh pun baki daripada 10,000 ekar hanya 2,000 ekar yang tinggal tetapi banyak lagi kayu yang tinggal dalam kawasan yang telah pun dikerja itu, oleh sebab kayu-kayu tersebut tidak dapat diekspot. *Oleh itu kami bercadang untuk* mengerja balik kawasan yang telah pun dikerja itu untuk di proses dalam kilang papan kami di Bukau. (Emphasis added.)

From the above passage, the word 'bercadang' used therein in respect of the 8,000 acres, in my interpretation is 'propose'. That is why, I think, as explained by William Shim at para 17 of his affidavit, that consideration was given only to the 2,000 acres, being the area that is unlogged. The plaintiff, by way of a copy of exh 'WS6' dated 17 January 1987, was duly notified of such approval and by necessary implication therefore its 'proposal' to continue logging over the 8,000 acres must have been rejected and the plaintiff cannot deny knowledge of the refusal of its 'proposal'. Further, the plaintiff, by its letter (exh 'WS7'), again appealed for extension of the 2,000 acres on the ground that it could not finish working on the said area and prayed that it be given until 31 December 1988. This appeal was again approved vide exh 'WS 8' and the 'pemelihara hutan' was directed to take action accordingly. If we look at para D3(b) of exh 'WS1', action for renewal was taken accordingly by way of reference no JP (P&P) 01/1/6/30 dated 24 April 1988. It is to be observed that the plaintiff did not lift a finger from the time of the first approval and up to the date of the renewal to 1988 to complain, for example, 'Look, according to the remarks in 'RTK-15', the approval is for three years for the area of 10,000 acres and not 2,000 acres'. In the absence of any complaint or protest to the decision of granting only 2,000 acres, it naturally implies that the decision was accepted by the plaintiff and the first defendant was then given the authority to work on the 8,000 acres. Once there is no more licence to work on the 8,000 acres, then it is a matter entirely within the state government's discretion to whom to grant the licence for the said area. The plaintiff only protested and relied on exh 'RTK-15' when the first defendant wanted to work on the said area. With respect, I think, the plaintiff by its own conduct and action should instead be estopped from relying on 'RTK-15' to assert its so-called legal rights over the first defendant in respect of the 8,000 acres. That the first defendant was given a licence to work on the said area is not disputed. In my view, therefore, there is no serious question to be tried and on this ground alone, I should order that the interim

injunction order be set aside. I would add further that the claim of the plaintiff in that event would appear to be frivolous or vexatious against the first defendant.

Principle (2)

However, assuming I am wrong in my view, I should then consider 'the balance of convenience' principle. In considering this principle, I should first consider whether if the plaintiff succeeds, he would be adequately compensated by damages for the loss sustained between the application and the trial. The three-year period claimed by the plaintiff expires in December 1989 and the first defendant's licence expires in August 1989. As the remaining period is short and it is unlikely that the plaintiff would be given an extension, and the first defendant being a state agency and obviously backed by the state government, I am of the view that if the plaintiff should succeed, he would be adequately compensated for the loss sustained between the application and the trial. Further, if the plaintiff succeeds at all in damages, such damages are eventually claimable against the fourth and fifth defendants as the first defendant had a licence issued by them. Therefore, I do not think that the state government is in no position to pay the damages if the plaintiff is successful. On the facts and the circumstances of the case, no interlocutory injunction should normally be granted (see *Fellowes* v *Fisher*[5] and *Rimbunan Hijau Sdn Bhd* v *Sarawak Plywood (M) Sdn Bhd*[9]).

Principle (3)

On the other hand, if the plaintiff fails, then would the first defendant be adequately compensated under the plaintiff's undertaking in damages? An examination of the plaintiff's account and that of the first defendant's account will show that they are miles apart in terms of assets and profits. The plaintiff's claim of a three-year licence, if valid, will expire in December 1989 and where does it go from there? The first defendant, being a state agency, will be in a stronger position to get an extension of its licence and in that event to injunct the first defendant until the date of the trial, which may take sometime, the damages will be substantial and looking at the plaintiff's position, I am of the view that the first defendant could not be adequately compensated by the plaintiff on its undertaking. In that event, there is reason to set aside the interim injunction.

Principle (4)

In considering other factors relevant to the balance of convenience, an important factor in the balance, should this otherwise be even, is the preservation of the status quo. The first defendant has got a licence and the chances of its getting a renewal of the licence I should say, is almost 99% and the overall project is of public interest, ie for a paper and pulp project and not of individual or a group of individual's interest; for these reasons it is not desirable in my view that the status quo be maintained until trial. (See *Si Rusa Beach Resort Sdn Bhd* v *Asia Pacific Hotels Management Pte Ltd.*[10]) Further, the plaintiff's delay in asserting its alleged legal rights over the 8,000 acres clearly indicates lack of bona fide.

Principle (5)

Finally, and apparently even if the balance still appears even, it may not be improper for the court to take into account in tipping the balance the relative strength of each party's case as revealed by the affidavit evidence. As I indicated earlier, there is no conflict of evidence on the affidavits as to the facts on which the claims of either party may ultimately depend nor do I have to decide difficult questions of law which call for detailed argument and mature consideration. It thus appears to me that in tipping the balance of the relative strength of each party's case, I would say that the balance is in favour of the first defendant.

For the reasons set out by me and in all the circumstances of this case, I would set aside the interim injunction order granted on 6 March 1989 and award costs of the application to the first defendant.

Mr Selvam indicated to the court today regarding the order in respect of damages in view of my judgment setting aside the interim injunction order. I had inadvertently omitted to make such an order. Accordingly I now order that damages be assessed by the registrar on a date to be fixed.

Application allowed.

Solicitors: *Shafee & Co; PK Lim & Co Advocates; Sugumar & Co; Drew & Napier (Singapore); Luping Koding Kurup & Advocates; Shelley Yap Leong, Chong Chia & Co.*

Reported by *Michele Rasanayagam*